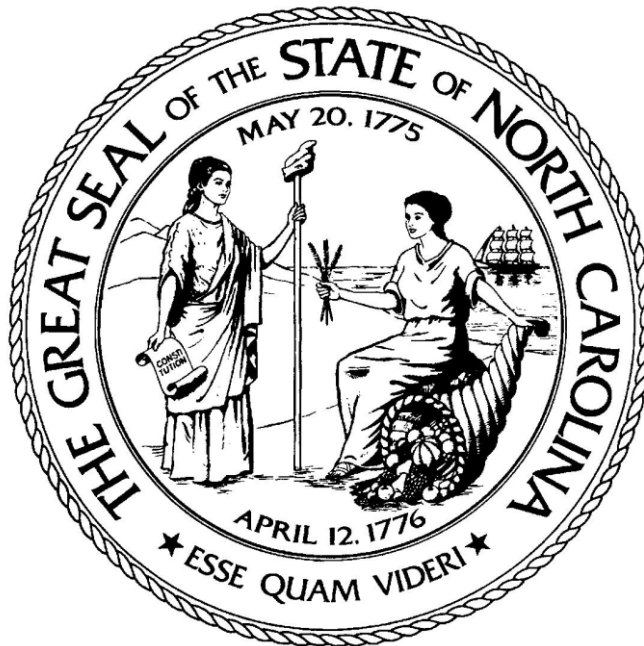


**2013-2014  
JOINT LEGISLATIVE OVERSIGHT  
COMMITTEE ON  
UNEMPLOYMENT INSURANCE**



**REPORT TO THE 2013-2014  
GENERAL ASSEMBLY OF NORTH CAROLINA  
2014 SESSION**

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\* All of the meeting handouts, including Power Point presentations, may be accessed online in PDF format at the Joint Legislative Oversight Committee on Unemployment Insurance website: [http://www.ncleg.net/gascripts/Committees/Committees.asp?sAction=ViewCommittee&sActionDetails=Non-Standing\\_6596](http://www.ncleg.net/gascripts/Committees/Committees.asp?sAction=ViewCommittee&sActionDetails=Non-Standing_6596)



**JOINT LEGISLATIVE OVERSIGHT COMMITTEE ON  
UNEMPLOYMENT INSURANCE**

*State Legislative Building  
Raleigh, North Carolina 27603*

*Representative Julia C. Howard, Co-Chair*

*Senator Bob Rucho, Co-Chair*

**May 9, 2014**

**TO THE MEMBERS OF THE 2014 GENERAL ASSEMBLY:**

The Joint Legislative Oversight Committee on Unemployment Insurance submits to you for your consideration its report pursuant to G.S. 120-70.155; S.L. 2013-2, Section 10; House Bill 4, Section 10.

Respectfully Submitted,

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Rep. Julia C. Howard, Co-Chair

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Senator Bob Rucho, Co-Chair

2013-2014

JOINT LEGISLATIVE OVERSIGHT COMMITTEE  
ON UNEMPLOYMENT INSURANCE

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# PREFACE

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The Unemployment Compensation Program is a Federal-state partnership created by the federal Social Security Act of 1935 and the Federal Unemployment Tax Act (FUTA). The purpose of the UI program is to provide economic stability to both the unemployed individual and the surrounding community. Federal law requires states to offer temporary unemployment compensation benefits to individuals who lose a job through no fault of their own and are able, available, and actively seeking work. States may design their own UI program so long as the program meets minimal federal coverage and benefit requirements. Employers pay both a federal and state unemployment tax to fund the program. No part of either tax may be deducted from an employee's wages.

North Carolina, like many other states, could not adequately fund its unemployment insurance trust fund during the Great Recession. North Carolina began borrowing money from the federal government to pay its unemployment benefits in February 2009. The State's outstanding loan balance reached \$2.5 billion. The General Assembly enacted fundamental changes to the State's UI program over the past three years to address the structural imbalance in the State's unemployment insurance fund:

- Merger of the administration of the UI program from an independent agency<sup>2</sup> to a division<sup>3</sup> within the Department of Commerce with the goal of achieving employment security organizational reform and savings. The merger sought to streamline and strengthen the workforce development efforts of the UI program and Commerce.

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<sup>2</sup> Employment Security Commission.

<sup>3</sup> Division of Employment Security.

- Creation of a Board of Review to determine appeal policies and procedures and to hear appeals arising from decisions of appeal referees.
- Enhancements of the tools available to the Division of Employment Security (DES) to prevent, detect, and recover UI overpayments.
- Decreases in the benefit calculation and duration.
- Increases in the State unemployment tax rates.
- Repeal of substantial fault, elimination of most good cause provisions for leaving work voluntarily, and restriction of the availability to file attached claims.

The General Assembly created the Joint Legislative Oversight Committee on Unemployment Insurance as a Non-Standing Committee<sup>4</sup> to ensure that a group of legislative members remain educated on UI issues and the administration of the State's program. The Committee consists of eight members, four appointed by the Speaker of the House of Representatives, and four appointed by the President Pro Tempore of the Senate. The co-chairs for 2013-2014 are Representative Julia C. Howard and Senator Bob Rucho.

In its study of the unemployment insurance laws, G.S. 120-70.156, gives the Committee a very broad scope, directing the Committee to "review the State's unemployment insurance laws to determine which laws need clarification, technical amendment, repeal, or other change to make the laws concise, intelligible, and easy to administer." The Committee monitors the payment of the debt owed by the Unemployment Insurance Fund to the federal unemployment account, reviews and determines the adequacy of the balances in the Unemployment Insurance Fund and the Unemployment Insurance Reserve Fund, and studies the workforce development programs and reemployment assistance efforts of the Department of Commerce.

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<sup>4</sup> Article 12R of Chapter 120 of the General Statutes. The Article expires July 1, 2023.



A copy of Article 12R of Chapter 120 of the General Statutes is included in Appendix A. A committee notebook containing the Committee minutes and all information presented to the Committee is filed in the Legislative Library and may also be accessed online at the Committee's website: [http://www.ncleg.net/gascripts/Committees/Committees.asp?sAction=ViewCommittee&sActionDetails=Non-Standing\\_6596](http://www.ncleg.net/gascripts/Committees/Committees.asp?sAction=ViewCommittee&sActionDetails=Non-Standing_6596)

# COMMITTEE PROCEEDINGS

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The Joint Legislative Oversight Committee on Unemployment Insurance met eight times prior to the convening of the 2014 Regular Session of the 2013 General Assembly. The Committee focused its attention on the Unemployment Insurance Fund balance, the repayment of the debt owed by the Fund to the federal unemployment account, and the implementation of the legislative changes enacted over the past three years to the State's unemployment insurance (UI) program. Appendix B contains a copy of the Committee's agenda for each meeting. All of the materials distributed at the meetings may be viewed on the Committee's website.

## UNEMPLOYMENT TRUST FUND DEBT BALANCE

### Unemployment Trust Fund Debt Balance

Status reports on the Unemployment Trust Fund debt balance were provided by DES at each meeting. Based on statistical models provided by the Upjohn Institute, the program changes included in HB 4; S.L. 2013-2 and HB 112; S.L. 2013-363 are projected to result in the debt being repaid in 2015. The model projected that the debt would be repaid in 2018 without legislative changes.

DES reported that the year-end debt balance for 2013 was approximately \$1.8 billion. The balance for the end of 2012 was \$2.5 billion. Debt reduction reflected increased tax collections from:

- FUTA credit reduction
- Transferred balances from other funds
- Reserve payments from state and local governments
- Reduced benefit payments resulting from program changes in HB 4.

### **FUTA Credit Reductions**

When the State is in compliance with US DOL requirements, the effective FUTA tax rate is 0.6%, reflecting a tax rate of 6% with a credit of 5.4%. After borrowing from the federal government for two successive years, an automatic credit reduction was triggered in 2011 to accelerate repayment of the debt. The FUTA credit is reduced by 0.3% each year until the debt is repaid. The FUTA credit reduction for 2013 was 0.9%, resulting in increased employer taxes of \$63 per employee. The FUTA credit reduction for 2014 will be 1.2%, or \$84 per employee. The debt is projected to be repaid in 2015 and the FUTA credit will return to 5.4%.

### **Transferred Balances**

A total of \$17 million was transferred from the Worker Training Trust Fund, the Training and Employment Account and the Supplemental Employment Security Administration Fund. These funds were transferred to the Unemployment Insurance Trust Fund and used to reduce the debt balance. The fund transfers were provided for in HB 112; S.L. 2013-363.

### **Reserve Payments from State and Local Governments**

HB 4 required State and local governments to build a reserve equal to 1% of taxable payroll so that benefit payments on behalf of their employees can be drawn from the reserve rather than being paid from the Trust Fund and reimbursed in arrears. The first installment of the 1% payment was made in October and reduced the debt by \$16.6 million.

### **Weekly Claims**

The number of weeks for which benefits were claimed in 2013 was approximately 4.6 million compared to approximately 5.5 million in 2012. This reduction reflects both an improving economy and a reduction in the number of weeks allowed per claim. HB 4 reduced the maximum number of weeks of

benefits allowed from 26 to a sliding scale ranging from 12-20 weeks depending on the unemployment rate. Beginning in January of 2014, the maximum numbers of weeks allowed is 19. This is based on the average unemployment rate for July, August and September of 2013.

## **STATE UNEMPLOYMENT RATE**

### **Unemployment Rate**

At the February meeting, the Committee heard presentations on recent trends in the unemployment rate and how it is calculated. The unemployment rate has declined sharply since 2010 from 11.3% to 6.3%. The rate is calculated monthly by dividing the number of persons unemployed by the total workforce and multiplying the result by 100. This rate, known as the “headline rate,” is most often cited in the media, but it does not include discouraged workers or those marginally attached to the workforce.

The Bureau of Labor Statistics (BLS) publishes the U-5 (includes discouraged plus marginally attached workers) and U-6 rates (includes all U-5 workers plus those employed part-time for economic reasons) to provide a broader indication of economic conditions. For the four-quarter period beginning with the second quarter of 2014, the average unemployment rate was 8.6% for U-5 and 13.6% for U-6. The average U-3, or headline rate, for the same period was 7.2%.

The data used to estimate the national unemployment rate comes from the Current Population Survey (CPS). The CPS is a monthly household survey conducted by the US Census Bureau and includes 60,000 households. For state estimates, the Local Area Unemployment Statistics (LAUS) program enters a variety of employment and population data into a BLS statistical model to calculate the labor force estimate and unemployment rate. LEAD (Labor

Economic Analysis Division) staff use BLS methodologies to determine measures for sub-state areas.

State and sub-state estimates are released monthly. Initial estimates are considered preliminary and undergo revisions the month following release. In addition, all state and sub-state estimates undergo an annual revision which is reviewed by State and BLS analysts.

Monthly releases for national data typically occur on the first Friday of the following month. Regional and state estimates are released two weeks following the national release. Sub-state estimates are released 10-12 days following the regional and state release.

Dr. Mike Walden, Distinguished Economics Professor at NC State University, noted that North Carolina has typically had a “bumpier ride” compared to the rest of the nation in terms of percentage change in employment during and after economic downturns. This means that the State has experienced greater unemployment and stronger recoveries than the rest of the nation and is caused in part by the State’s greater reliance on manufacturing, which is typically impacted more significantly than other sectors of the economy. North Carolina’s unemployment rate since the Great Recession has been higher than the national rate, but has declined faster than the national rate since 2012.

#### **Duration of Benefits**

HB 4 utilized a sliding scale to tie the duration of benefits to the unemployment rate. When the unemployment rate is greater than 9%, claimants may qualify for a minimum of 13 weeks and a maximum of 20 weeks. For each half-percent drop in the unemployment rate, the minimum and maximum duration of benefits is decreased by one week. If the rate is 5.5% or less, the duration ranges from 5 to 12 weeks. The unemployment rate effective for January through June is based on the average unemployment rate for the previous July

through September. The unemployment rate effective for July through December is based on the average rate for the previous January through March.

The formula used to determine what number of weeks a claimant qualifies for is based on a ratio of base period earnings divided by the average of the two most recent quarterly wages. The result is multiplied by 8.67 and determines the claimant's benefits duration if it falls within the range for the applicable unemployment rate. If it is outside the specified range, the minimum or maximum duration applies. Because this formula, a portion of which was used prior to HB 4, does not result in less than 17 weeks duration, the maximum duration applies anytime the unemployment rate is 8% or less. The Legislative Proposal would eliminate the variable range of benefit duration and apply the current maximum for each corresponding unemployment rate.

States that utilize variable duration of benefits award a greater number of weeks to claimants with a greater attachment to the workforce as measured by wages earned throughout the base period as opposed to one or two quarters of the base period. North Carolina has other aspects of its Unemployment Insurance program that are based on attachment to the workforce including the minimum eligibility requirement for base period wages of six times the average weekly wage. In addition, the formula for determination of the weekly benefit amount was changed in HB 4; S.L. 2013-2 so that it is now based on wages earned in two quarters rather than one.

## **PROGRAM INTEGRITY**

### **Filing a Claim**

When an individual files a claim for unemployment insurance benefits, that claimant must report the reason for separation from employment. DES then sends a form to the claimant's last employer requesting the separation

information, and a form to any other base period employer. The form notifies all employers that a claim for benefits was filed based either wholly or in part on wages paid by the employer, and giving the employer an opportunity to request non-charging of these benefits.

Federal Regulations require the State unemployment agency to obtain promptly and prior to a determination of an individual's right to benefits such facts as will be sufficient to ensure the payment of benefits when due. Information must be obtained promptly so that the payment of benefits is not unduly delayed. In general, the investigation made by the agency must be complete enough to provide information upon which the agency may act with reasonable assurance that its decision is consistent with the unemployment compensation law. On the other hand, the investigation should not be so exhaustive and time-consuming as to unduly delay the payment of benefits and to result in excessive costs.

#### **Employer Responsibility to Respond**

Unemployment compensation program integrity provisions in Federal law enacted in October 2011<sup>5</sup> required states to provide that an employer's account shall not be relieved of charges relating to a payment from the State unemployment fund when the employer is determined to be at fault. Therefore, under G.S. 96-11.4, effective October 21, 2013,<sup>6</sup> if the employer fails to respond timely or adequately (i.e., completely and accurately) to the request for separation information and the employer or its agent has a pattern of failing to

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<sup>5</sup> Charges to the employer's account will be applied under the requirements of Section 252 of the Trade Adjustment Assistance Extension Act of 2011 (TAAEA), amending Section 3303 of the Federal Unemployment Tax Act (FUTA) at subsection (f) and interpreting Section 3309(a)(2) consistently therewith for employers electing reimbursable status under G.S. 96-9.6, and the authority of the Secretary and Assistant Secretary of Commerce under G.S. 96-4. [See P.L. 112-40.]

<sup>6</sup> 2013-2, S4; 2013-224, ss 11, 19

respond timely or adequately to these requests, the employer's account will be charged for benefits paid. These charges will apply regardless of whether DES's benefits determination is later reversed on appeal or an overpayment of benefits is established and collected from the claimant.

### **Adjudication**

A separation issue exists whenever a claimant is separated from his last employer for any reason other than lack of work or inability to perform the available work. A separation issue may be first detected when a claim is filed or when the employer returns the requested separation information. Either way, if the separation information indicates a separation issue, the agency conducts a fact finding interview and the claim is referred for adjudication.

A DES Central Office adjudicator reviews the file to ensure that all information needed to fairly and accurately dispose of the issues is contained in the file. If additional information or employer rebuttal is required, the adjudicator makes a reasonable attempt to obtain the information. The adjudicator then prepares a written determination and enters the resolution into the agency's Benefit Payment System.

The U.S. Department of Labor (USDOL) requires that separation issues be adjudicated within 21 days of the issue detection date. Any party adversely affected by the adjudicator's determination has the right to file an appeal.

USDOL has been working with the States to identify several robust strategies that focus on the prevention of overpayments and will yield the highest impact in reducing UI improper payment rates. Asst. Sec. Folwell informed the Committee on October 2, 2013, that the agency had a backlog of 8,000 cases in adjudication and 11,000 cases in lower level appeals. On February 4, 2014, Sec. Folwell stated that Adjudication was paying 100% of claims within 20 days if no issue was raised. However, provisions in House Bill 4 that require



the agency to pursue repayment of overpayments caused "adjudication hemorrhaging," and, as a result, "now, everything must go through adjudication – there is no more pay-and-chase." In other words, adjudication attempts to contact parties by telephone first, as opposed to paying out and letting lower level appeals deal with it. He reported that, in the past, 30% of adjudicators' determinations were appealed, and, of those, 50% were overturned. Sec. Folwell reported that the agency is now "doing it correctly, not quickly." He advised that the agency's plan to deal with the backlog included reassigning various agency staff to the Adjudication Department. Information presented to the UI Oversight Committee in February was that DES's Adjudication Department was working through a backlog of approximately 12,000 cases.

#### **Preventing and Detecting Overpayments**

Unemployment insurance program integrity was a focus of the Committee's meeting of November 6, 2013. Generally, an effective program integrity effort is aimed at preventing and detecting fraud, abuse, overpayments, overutilization of services, and inefficiency. Two such initiatives were highlighted for the Committee.

First, Kay Meyer of the Office of State Controller (OSC) presented an overview of the Government Data Analytics Center (GDAC). The GDAC is an enterprise level program that constitutes the "brains" of the State's business intelligence. "Business intelligence" is defined as a broad category of tools, applications, and technologies that support gathering, analyzing, and accessing data to improve the State's business decision making. GDAC is designed to foster interagency collaboration among State agencies that will lead to improved data sharing for enhanced program integrity across programs. In addition to developing and implementing applications and tools to enhance the State's overall efficiency through data analytics, the GDAC operates and maintains

CJLEADS (Criminal Justice Law Enforcement Automated Data Services) and helped develop and implement the fraud and compliance alerts in NC FACTS, the Department of Health and Human Services system used for public benefits eligibility services and screening.

With respect to unemployment insurance, GDAC is focusing on three main areas to improve UI program integrity: (i) undocumented succession, where employers move employees to another company to avoid taxes; (ii) fictitious business, when fictitious companies are established so that fraudulent claimants can draw benefits based upon wages from the phony company; and (iii) unemployment claims and eligibility, to detect improper claims such as payments to deceased or incarcerated persons.

The second program integrity presentation was made by Chinita Arceneaux and Ted Brinn, both of the Division of Employment Security, Department of Commerce. Their presentation focused on DES program integrity efforts and endorsed how NC FACTS is aiding in the prevention and detection of unemployment insurance fraud. Ms. Arceneaux and Mr. Brinson reported that DES is re-engineering its processes to increase the frequency of cross matching using the Weekly National Directory of New Hires (NDNH). Utilizing the Treasury Offset Program (TOP), DES had recovered over \$11 million during the first three quarter of 2013. DES has engaged the North Carolina Conference of District Attorneys in discussions aimed at increasing the number of felony prosecutions and convictions for unemployment fraud. Cases have been referred to the federal Office of the Inspector General for prosecution.

Further, it was reported that unemployment collection assignments for the period 11/1/2012 through 10/31/2013 included 16,464 notices of intent to bring civil actions for collection and 12,411 judgments entered. During the same period, blocked claims numbered 4,127 and there were 2,450 audits conducted by

DES. Identifying when employers misclassify employees as independent contractors, in order to avoid payment of unemployment taxes, is another facet of the program integrity effort. The audits revealed 8,877 instances of worker misclassification.

## **BOARD OF REVIEW**

### **Confirmation of Board Members**

The General Assembly created the Board of Review<sup>7</sup> to determine appeals policies and procedures and to hear appeals arising from the decisions and determinations of the Lower Appeals Department of DES. The Board consists of three members<sup>8</sup> appointed by the Governor and confirmed by the General Assembly. In S.L. 2013-224, the General Assembly directed the Governor to make the appointments to the Board by September 1, 2013, and provided that the appointments made under the authority of this legislation would not require legislative confirmation. The Governor made the appointments on December 6, 2013.

The Committee met the Governor's appointees to the Board of Review at its February meeting.<sup>9</sup> The Committee discussed the appointment process and noted the Governor did not make timely appointments. The Legislative Proposal amends S.L. 2013-224 to extend the date by which the Governor needed to make the appointments to remove any ambiguity or uncertainty about the proper constitution of the Board.

### **Higher Level of Appeals**

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<sup>7</sup> S.L. 2011-401

<sup>8</sup> One member representing employers, one member representing employees, and one member representing the general public. The member representing the general public is designated as the chair of the Board and must be a licensed attorney. G.S.96-4(b).

<sup>9</sup> Keith Holliday of Guilford County; Stanley Campbell of Mecklenburg County; and Jeanette Doran of Wake County.

The U.S. Department of Labor (USDOL) encourages states to have a second level of review for DES decisions and determinations, but it does not require one. Beginning in November 1, 2011, North Carolina's UI laws provided a second level of appeal to a Board of Review. Until the appointment of the Board members in December 2013, the Assistant Secretary of Commerce for the DES provided parties with the second level of review the statute vested in the Board of Review. The Superior Court in Rowan County noted that the Assistant Secretary of Commerce for DES did not have the statutory authority to make those decisions. According to the testimony in the case of *Wesley A. Lane v. N.C. Department of Commerce, Division of Employment Security*<sup>10</sup>, there may have been 13,000 lower level decisions and determinations appealed to the second level of review prior to the Governor's appointment of the Board of Review. The Legislative Proposal validates the actions taken by the Assistant Secretary during the period of time that the Board of Review was not constituted.<sup>11</sup>

#### **CONFIDENTIALITY OF UNEMPLOYMENT INSURANCE INFORMATION**

On February 28, 2014, an attorney representing claimants and employers in unemployment insurance appeals matters filed a lawsuit against the North Carolina Department of Commerce, Division of Employment Security; Sharon Decker, in her capacity as Secretary of Commerce; and Dale Folwell, in his capacity as the Assistant Secretary of the Division of Employment Security. The background of the lawsuit is as follows:

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<sup>10</sup> Notice of Appeal and Petition for Review of North Carolina Department of Commerce, Division of Employment Security's Decision, Docket 13 CvS 1109, Superior Court Division, Rowan County.

<sup>11</sup> The Committee noted that a party who does not agree with a DES decision or determination may seek redress in the Superior Court. The failure to provide a second level of review in the form required by the statute, or by a properly constituted Board of Review, does not irreparably harm a party who disagrees with a decision because the party's right to appeal to Superior Court is not impeded

Every day, DES generates notices of hearing to inform claimants and employers of the date and time of scheduled appeals before an Appeals Referee. The notices give 14 days' notice of the scheduled hearing. Since approximately 2004 (10 years), DES has charged \$300 a month to print extra copies of all hearing notices generated and has made them available for pickup or mailing on a daily basis for anyone who requested to receive them. Attorney Monica Wilson's practice for several years has been to send a courier every morning to pick up the copies of the hearing notices DES has made available pursuant to her request under the N.C. Public Records Law.

On February 26, 2014, DES Assistant Secretary Dale Folwell sent a letter addressed to "All attorneys receiving notices of hearings by Appeal Referees/Hearing Officers" announcing that in-person pickup of hearing notices will not be permitted after February 28, 2014, due to "security concerns" and that the "notices will be batched and sent to your law offices at least three times per month via U.S. Postal Service." The letter also announced an increase in the cost of the monthly provision of hearing notices from \$300 to \$600 per month.

On February 26, plaintiff Wilson sent an email to DES requesting continued access to the hearing notices on a daily basis. She also made the request during a telephone conversation with Assistant Secretary Folwell, who denied that request. Two days later, Ms. Wilson filed a Verified Complaint and Motion for Injunctive Relief in Wake County Superior Court, alleging that the Division's actions violated the North Carolina Public Records Law.

A temporary restraining order (TRO) was issued by Judge Michael Morgan on March 3, 2014, finding: that without timely access to hearing notices beginning on or after February 28, 2014, plaintiffs will not be able to inform claimants that their services are available to the scheduled hearings, which will cause immediate and irreparable harm to their business; that plaintiffs have no

adequate remedy at law; and that the plaintiffs were likely to prevail on the merits of the claims on the grounds that refusal to provide reasonable access to public records as DES has done for 10 years violated G.S. 132-6.2(b) and that a charge of \$600/month does not reflect the actual cost of producing the records, in violation of the N.C. Public Records Law. Judge Morgan's TRO prohibited DES from terminating the long-standing policy of DES of providing copies of hearing notices on a daily basis for a fee of \$300/month, and allowing persons access to DES if reasonable security measures are followed.

Subsequently, on March 7, 2010, the U.S. Department of Labor (USDOL) sent Mr. Folwell a cease-and-desist letter, stating that disclosure of the Notices of Hearings constitutes a failure to comply with Federal laws and regulations relating to confidentiality of unemployment compensation (UC) information. The letter stated that continuing to provide the notices jeopardizes the State's receipt of Title III grant funds, which funds the administrative operations of North Carolina's UI program, totaling approximately \$55M. The USDOL letter contained the statement that "state law conforms to Federal requirements" in that provisions of G.S. 96-4(x) requires compliance with the Federal regulations, but stated that the agency's *practices* do not comply with Federal law regarding confidentiality of UC information.

Following a hearing in Wake County Superior Court, Superior Court Judge Paul Ridgeway issued a preliminary injunction on March 10, 2014, continuing the terms of the TRO until trial.

The Committee directed the staff to contact the US Department of Labor to confirm what North Carolina needed to do to remain compliant with federal UI laws, regulations, and guidance since the funding for DES and the FUTA tax rate applicable to North Carolina employers is contingent upon this compliance. Based on guidance received from US DOL, the Legislative Proposal makes

changes to the State's Public Records Law and the State's Employment Security Law to clarify what information disclosures are permissible and impermissible under Federal laws and regulations.

### **TECHNICAL, CLARIFYING, AND ADMINISTRATIVE CHANGES**

The Committee reviewed the State's unemployment insurance laws to determine which laws need clarification, technical amendment, repeal, or other change to make the laws concise, intelligible, and easy to administer. It consulted with DES to determine which laws needed clarification and technical amendment and it heard testimony from DES on statutory changes that would enable DES to better administer the laws. The Committee also consulted with USDOL to confirm that the changes made would adhere to the federal requirements for the State's UI program. The Legislative Proposal contains these changes.

### **WORKFORCE DEVELOPMENT AND REEMPLOYMENT ASSISTANCE EFFORTS**

[S.L. 2013-2](#) charged this Committee with the study and review of “workforce development programs and reemployment assistance efforts of the Division of Workforce Solutions of the Department of Commerce.”<sup>12</sup> More specifically, S.L. 2013-2 directs the Department of Commerce to take into consideration the following factors when determining the appropriate number and location of local offices:

1. Location of the population served.
2. Staff availability.
3. Proximity of local offices to each other.

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<sup>12</sup> On December 4, 2013, this Committee met jointly with the Joint Legislative Workforce Development System Reform Oversight Committee.

4. Use of automation products to provide services.
5. Services and procedural efficiencies.
6. Any other factors the Division considers necessary in determining the appropriate number and location of local offices.

Given these charges, the Committee heard regular updates from Division of Workforce Solutions' (DWS) leadership regarding Local Office Service Realignment, Integrated Service Delivery and implementation of a Memorandum of Understanding with the Division of Employment Security. Each of these topics is discussed in more detail below.

### **Local Office Service Realignment**

DWS began oversight of local offices effective November, 2011, as a result of [S.L. 2011-401](#), which directed Commerce to subsume the Employment Security Commission (ESC), effectively merging ESC's Employment Services Division with Commerce's Division of Workforce Development; the newly merged entity was renamed the Division of Workforce Solutions.

Local offices are federally funded and have historically also received supplemental support from the Employment Security Reserve Fund. However, S.L. 2013-2 restricted allowable uses of Reserve Fund monies, forcing realignment/downsizing of local offices. As of April, 2014, DWS has realigned 23 offices and reported to the Committee over \$500,000 in cost-savings, which have been achieved through reduced rent, obtaining local financial support, co-locating with partners, and/or moving to less expensive space (see Appendix C for DWS Service Realignment April, 2014 Update). Commerce's website lists 122 active local office sites (see Appendix D and E for list and map).

### **Integrated Service Delivery**

In efforts to maintain and even enhance customer support in the midst of local office service realignment, DWS launched an "integrated service delivery"



initiative. Prior to the merger with ESC, local office staff assisted customers according to program eligibility categories, which include: Workforce Investment Act, Wagner Peyser, Trade Adjustment Assistance and Veterans' Services. Staff worked in silos, referring customers to one another, depending on the individual's needs. Integrated service delivery focuses on cross-training employees so one staff member can cover all programs. The goal is to provide seamless service delivery, increase efficiencies, and better satisfy customers. Local offices are working toward a new structure, each consisting of the following teams:

- Welcome Team: Registers the customer, provides an orientation, and assesses the individual.
- Talent Development Team: Explores career options, assesses needs and barriers, and identifies appropriate services.
- Talent Employment Team: Explores career options, searches for jobs and provides referrals, and assesses employment opportunities.

These teams seek to lead people to employment through a variety of intervention activities, including: On-the-job training, apprenticeship, community college coursework, and employment barrier assistance with issues such as transportation and/or childcare.

Another component of this initiative is the launch of a new site, NCWorks Online ([ncworks.gov](http://ncworks.gov)) that consolidates reliance on approximately 10 different technology systems. Since August of 2013, this site has been used as an integrated workforce system for employers, job seekers, training providers, workforce staff, and other stakeholders, which:

- brings together unduplicated job postings from across the Internet;
- provides career tools to allow job seekers to effectively find jobs that match their skills; and
- offers user-friendly options to analyze the current local labor market.

## **Memorandum of Understanding (MOU) between DWS and Division of Employment Security (DES)**

In order to establish DWS responsibilities for customers seeking Unemployment Insurance, DWS and DES established a MOU that requires new UI claimants to participate in one-on-one, in-person Employability Assistance Interviews (EAI) with workforce specialists. An EAI must be scheduled within four weeks of the first UI payment and consists of the following activities:

- verifying claimant identity by capturing photographic identification, which is scanned and sent to DES;
- validating work search requirements;
- registering with NCWorks Online;
- performing an occupational skills assessment;
- reviewing labor market information;
- developing an employability plan; and
- providing job referrals.

On a monthly basis, DWS must provide reports to DES on EAI activities and demographics (See Appendix F for the DWS/DES MOU).

### **EMERGENCY UNEMPLOYMENT COMPENSATION**

The Committee reviewed the federally funded Emergency Employment Compensation program (EUC08) and North Carolina's participation in that program. North Carolina has not participated in the EUC08 program since July 1, 2013. The EUC08 program ended December 29, 2013. Recent attempts to extend the federal program contained a provision that would allow North Carolina to participate. The Committee confirmed that a decision to participate or not participate in the EUC08 is an executive branch decision and does not require any statutory changes by the General Assembly.

In times of economic hardship, Congress has created temporary federal programs to federally fund additional weeks of unemployment compensation. It did so in 1958, 1961, 1972, 1975, 1982, 1991, and 2002. Most recently, beginning in June 2008, Congress provided up to 47 weeks of additional weeks of unemployment compensation at the state determined benefit amount. The program, known as EUC08, originally expired on March 28, 2009. Congress amended and extended EUC08 eleven times before the program expired on December 29, 2013. The U.S. Senate attempted to extend the program through the month of March 2014 but the motion to invoke closure on S. 1845 of the 1st Session of the 113th Congress failed by a vote of 55-43 on February 6, 2014. The U.S. Senate considered S. 2149 during the 2nd Session of the 113th Congress but the bill has not passed by the date of this report.

The EUC08 benefits are 100% federally funded. To receive the funding, a state must elect to participate in the program through an agreement with USDOL. When Congress extended EUC08 in July 2010, it amended the program to include a "nonreduction clause". That clause temporarily prohibited states from actively reducing UC benefit amounts through changes to benefit calculation if the change resulted in a weekly benefit amount lower than it would have been on June 2, 2010. North Carolina changed its calculation of weekly benefit amounts in S.L. 2013-2. Upon the effective date of that change, July 1, 2013, USDOL terminated its agreement with North Carolina to provide EUC08 benefits to claimants in this State.

Section 6 of the legislation being considered in Congress in 2014 would provide that the nonreduction rule does not apply with respect to a state that has enacted a law before December 1, 2013, that, upon taking effect, would violate the nonreduction rule. If this provision was enacted, North Carolina could enter into a subsequent agreement with USDOL to provide EUC08 benefits to

claimants with respect to weeks of unemployment beginning on or after December 29, 2013. However, the Committee learned there are numerous administrative and programmatic issues that would be nearly impossible to overcome: an antiquated and rigid computer system; funding for the administration of the claims process; difficulty of administering and verifying claimant's adjusted gross income; the backdating of claims; and the determination of eligibility for weeks beginning after January 1, 2013.

## COMMITTEE RECOMMENDATIONS AND LEGISLATIVE PROPOSALS

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The Joint Legislative Oversight Committee on Unemployment Insurance makes the following recommendation to the 2014 General Assembly. The proposal is followed by an explanation and, if it has a fiscal impact, a fiscal memorandum, indicating any anticipated revenue gain or loss resulting from the proposal.

1. [Insert Name of Bill]

# LEGISLATIVE PROPOSAL

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INSERT NAME OF BILL

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# LEGISLATIVE PROPOSAL

A RECOMMENDATION OF THE JOINT LEGISLATIVE OVERSIGHT COMMITTEE  
ON UNEMPLOYMENT INSURANCE  
TO THE 2014 REGULAR SESSION OF THE 2013 GENERAL ASSEMBLY

**AN ACT TO \*\*\*.**

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**SHORT TITLE:** \*\*\*

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**PRIMARY SPONSORS:** Rep. Julia Howard and Sen. Bob Rucho

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**BRIEF OVERVIEW:** This proposal would make the following changes \*\*\*

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**FISCAL IMPACT:** The changes made by the proposal \*\*\*

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**EFFECTIVE DATE:** \*\*\*

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A copy of the proposed legislation, a bill analysis, and a fiscal memorandum begin on the next page.

# APPENDIX A

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## AUTHORIZING LEGISLATION ARTICLE 12R OF CHAPTER 120 OF THE GENERAL STATUTES

ALL MATERIALS DISTRIBUTED AT MEETINGS MAY  
BE VIEWED ON THE COMMITTEE'S WEBSITE:

[http://www.ncleg.net/gascripts/Committees/Committees.asp?sAction=ViewCommittee&sActionDetails=Non-Standing\\_6596](http://www.ncleg.net/gascripts/Committees/Committees.asp?sAction=ViewCommittee&sActionDetails=Non-Standing_6596)



Article 12R.

Joint Legislative Oversight Committee on Unemployment Insurance.

**§ 120-70.155. (Expires July 1, 2023) Creation and membership.**

(a) The Joint Legislative Oversight Committee on Unemployment Insurance is established. The Committee consists of eight members appointed as follows:

- (1) Four members of the House of Representatives appointed by the Speaker of the House of Representatives.
- (2) Four members of the Senate appointed by the President Pro Tempore of the Senate.

(b) The members serve for a term of two years. Members may complete a term of service on the Committee even if they do not seek reelection or are not reelected to the General Assembly, but resignation or removal from service in the General Assembly constitutes resignation or removal from service on the Committee. A member continues to serve until a successor is appointed. A vacancy shall be filled by the officer who made the original appointment. (2013-2, s. 10; 2013-224, s. 19.)

**§ 120-70.156. (Expires July 1, 2023) Purpose and powers of Committee.**

(a) Purpose. - The Joint Legislative Oversight Committee on Unemployment Insurance is directed to study and review all unemployment insurance matters, workforce development programs, and reemployment assistance efforts of the State. The following duties and powers, which are enumerated by way of illustration, shall be liberally construed to provide maximum review by the Committee of these matters:

- (1) Study the unemployment insurance laws of North Carolina and the administration of those laws.
- (2) Review the State's unemployment insurance laws to determine which laws need clarification, technical amendment, repeal, or other change to make the laws concise, intelligible, and easy to administer.
- (3) Monitor the payment of the debt owed by the Unemployment Trust Fund to the federal government.
- (4) Review and determine the adequacy of the balances in the Unemployment Trust Fund and the Unemployment Insurance Reserve Fund.
- (5) Study the workforce development programs and reemployment assistance efforts of the Division of Workforce Solutions of the Department of Commerce.
- (6) Call upon the Department of Commerce to cooperate with it in the study of the unemployment insurance laws and the workforce development efforts of the State.

(b) The Committee may report its findings and recommendations to any regular session of the General Assembly. A report to the General Assembly may contain any legislation needed to implement a recommendation of the Committee. (2013-2, s. 10; 2013-224, s. 19.)

**§ 120-70.157. (Expires July 1, 2023) Organization of Committee.**

The Speaker of the House of Representatives shall designate one representative as cochair, and the President Pro Tempore of the Senate shall designate one senator as cochair. The Joint Legislative Oversight Committee on Unemployment Insurance may meet upon the joint call of the cochairs. A quorum of the Committee is five members.

The Committee may meet in the Legislative Building or the Legislative Office Building. While in the discharge of its official duties, the Committee has the powers of a joint committee under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4. The Legislative Services Commission, through the Legislative Services Officer, shall assign professional staff to assist

the Committee in its work. The House of Representatives and the Senate's Directors of Legislative Assistants shall assign clerical staff to the Committee, and the expenses relating to the clerical employees shall be borne by the Committee. The Committee may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02. Members of the Committee shall receive subsistence and travel expenses at the rates set forth in G.S. 120-3.1, 138-5, or 138-6, as appropriate. (2013-2, s. 10; 2013-224, s. 19.)

**§ 120-70.158. (Expires July 1, 2023) Sunset.**

This Article expires July 1, 2023. (2013-2, s. 10; 2013-224, s. 19.)

# APPENDIX B

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## MEETING AGENDAS

ALL MATERIALS DISTRIBUTED AT MEETINGS MAY BE  
VIEWED ON THE COMMITTEE'S WEBSITE:

[http://www.ncleg.net/gascripts/Committees/Committees.asp?sAction=ViewCommittee&sActionDetails=Non-Standing\\_6596](http://www.ncleg.net/gascripts/Committees/Committees.asp?sAction=ViewCommittee&sActionDetails=Non-Standing_6596)

**AGENDA**  
**JOINT LEGISLATIVE OVERSIGHT COMMITTEE**  
**ON UNEMPLOYMENT INSURANCE**

*Rep. Julia Howard*

*Sen. Bob Rucho*

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*Wednesday, October 2, 2013*  
*Room 544, Legislative Office Building*  
*10:00 a.m.*

- I. **Call to Order**  
*Rep. Howard*
- II. **Welcome and Introductions**
- III. **Recent Legislative Changes Enacted to Reform the Unemployment Insurance System**
  - **Focus: Organizational Changes**  
**S.L. 2011-401**  
*Phyllis Pickett, Bill Drafting Division*
  - **Focus: Program Integrity**  
**S.L. 2012-134**  
*Jan Paul, Research Division*
  - **Focus: Debt Reduction**  
**S.L. 2013-2, as amended by S.L. 2013-224 and S.L. 2013-391;**  
**S.L. 2013-360 (budget bill)**  
*Rodney Bizzell, Fiscal Research*  
*Greg Roney, Research Division*
- IV. **Implementation of the Legislative Changes**  
*Assistant Secretary Roger Shackelford, Division of Workforce Solutions, Department of Commerce*  
*Assistant Secretary Dale Folwell, Division of Employment Security, Department of Commerce*
- V. **Adjournment**

**AGENDA**  
**JOINT LEGISLATIVE OVERSIGHT COMMITTEE**  
**ON UNEMPLOYMENT INSURANCE**

**Rep. Julia Howard**

**Sen. Bob Rucho**

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**Wednesday, November 6, 2013**  
**Room 544, Legislative Office Building**  
**10:00 a.m.**

- I.      **Call to Order**  
*Sen. Rucho*
- II.     **Approval of Minutes from October 2, 2013, Meeting**
- III.    **Status Updates**
- **Appointment of Board of Review Members**  
*Secretary Sharon Decker, Department of Commerce*
  - **Local Office Service Realignment**  
*Assistant Secretary Roger Shackelford, Division of Workforce Solutions, Department of Commerce*
  - **Modernization of State Unemployment Insurance Technology Programs**  
*Assistant Secretary Dale Folwell, Division of Employment Security, Department of Commerce*
  - **Unemployment Trust Fund Debt Balance**  
*Rodney Bizzell, Fiscal Research Division*
- IV.    **Unemployment Insurance Program Integrity**
- **Overview of Program Integrity**  
*Phyllis Pickett, Bill Drafting Division, North Carolina General Assembly*
  - **Report from the Government Data Analytics Center**  
*Kay Meyer, Office of State Controller*
  - **Report from the Division of Employment Security, Department of Commerce on Benefits Integrity and Employee Misclassification**  
*Chinita Arceneaux, Division of Employment Security, Department of Commerce*  
*Ted Brinn, Division of Employment Security, Department of Commerce*
- V.      **Adjournment**

## **AGENDA**

### **JT LEG WORKFORCE DEVELOPMENT SYSTEM REFORM OVERSIGHT COMMITTEE**

Rep. Julia Howard and Sen. Fletcher Hartsell

### **JT LEG OVERSIGHT COMMITTEE ON UNEMPLOYMENT INSURANCE**

Rep. Julia Howard and Sen. Bob Rucho

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**Wednesday, December 4, 2013  
Room 544, Legislative Office Building  
10:00 a.m.**

- I. **Call to Order**
- II. **Approval of Minutes from Prior Meetings**
- III. **Status Updates from Commerce**
  - **Appointment of Board of Review Members**  
*Fred Steen, Legislative Liaison to Governor McCrory*
  - **Division of Employment Security and Division of Workforce Solutions Memorandum of Understanding**
    - Assistant Secretary Dale Folwell, Division of Employment Security, Department of Commerce
    - Assistant Secretary Roger Shackleford, Division of Workforce Solutions, Department of Commerce
- IV. **Workforce Initiatives**
  - **Integrated Service Delivery**  
*Assistant Secretary Roger Shackleford, Division of Workforce Solutions, Department of Commerce*
  - **North Carolina Community College System Strategic Plan Overview and Examples of Success**  
*Dr. R. Scott Ralls, President, North Carolina Community College System*
- V. **Adjournment**

**AGENDA**  
**JOINT LEGISLATIVE OVERSIGHT COMMITTEE**  
**ON UNEMPLOYMENT INSURANCE**

**Rep. Julia Howard**

**Sen. Bob Rucho**

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**Wednesday, January 8, 2014**  
**Room 544, Legislative Office Building**  
**10:00 a.m.**

- I. Call to Order**
- II. Emergency Unemployment Compensation**
  - **Overview of EUC Prior to December 31, 2013**  
*Cindy Avrette, Research Division*
  - **EUC and Congressional Action to Date**  
*Doug Holmes, UWC-Strategic Services on Unemployment & Workers' Compensation*
- III. Status Updates**
  - **Unemployment Trust Fund Debt Balance Issues**  
*Division of Employment Security*
  - **Unemployment Benefits Paid to Federal Employees during Federal Government Shutdown**  
*Division of Employment Security*
  - **Current North Carolina Local Area Unemployment Statistics**  
*Division of Employment Security*
  - **Other Items**  
*Division of Employment Security*
- IV. Approval of Minutes from December 4, 2013, Meeting**  
*(The December meeting was a joint meeting with the Joint Legislative Workforce Development System Reform Oversight Committee)*
- V. Adjournment and Recognition of Committee Staff**

**AGENDA**  
**JOINT LEGISLATIVE OVERSIGHT COMMITTEE**  
**ON UNEMPLOYMENT INSURANCE**

**Rep. Julia Howard**

**Sen. Bob Rucho**

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**Wednesday, February 5, 2014**  
**Room 544, Legislative Office Building**  
**10:00 a.m.**

- I. Call to Order**
- II. Approval of Minutes from January 8, 2014, meeting**
- III. Employment Trends in North Carolina**  
*Mike Walden, William Neal Reynolds Distinguished Professor and Extension Economist in the Department of Agricultural and Resource Economics at North Carolina State University, and a member of the Graduate Economics faculty with The Poole College of Management*
- IV. Discussion of Unemployment Rate Calculation and Uses**  
*Betty McGrath, Ph.D, Director of Workforce Research and Evaluation, NC Department of Commerce, Labor and Economic Analysis Division*
- V. Board of Review**
  - **Introduction of Governor's Appointees to the Board of Review**  
*Jeanette Doran, Chair; Keith Holliday and Stanley Campbell*
  - **Discussion of Process and Procedures of the Board of Review to Date**  
*Jeanette Doran, Chair*
- VI. DES Status Updates**
  - **UI Trust Fund Debt Balance**
  - **Claim Statistics**
  - **DES/DWS Memorandum of Understanding**
- VII. Adjournment**



**AGENDA**  
**JOINT LEGISLATIVE OVERSIGHT COMMITTEE**  
**ON UNEMPLOYMENT INSURANCE**

**Rep. Julia Howard**

**Sen. Bob Rucho**

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**Wednesday, March 5, 2014**  
**Room 544, Legislative Office Building**  
**10:00 a.m.**

- I. **Call to Order**
- II. **Approval of Minutes from February 5, 2014 meeting**
- III. **Vision & Plan for Workforce Development- Getting the Unemployed Back to Work**  
*Will Collins, Special Assistant for Workforce Development, Department of Commerce*
- IV. **Division of Workforce Solutions (DWS) Status Updates**  
*Will Collins, Special Assistant for Workforce Development, Department of Commerce*
  - **Local Office Service Realignment**
  - **DES/DWS - Memorandum of Understanding**
- V. **Division of Employment Security (DES) Status Updates**  
*Assistant Secretary Folwell, DES, Department of Commerce*
  - **UI Trust Fund Debt Balance**
  - **Claims Backlog**
  - **Recapture of Benefits Issued to Federal Employees during Gov't Shutdown**
  - **Direct Deposit/Debit Cards**
- VI. **Adjournment**

**AGENDA**  
**JOINT LEGISLATIVE OVERSIGHT COMMITTEE**  
**ON UNEMPLOYMENT INSURANCE**

**Rep. Julia Howard**

**Sen. Bob Rucho**

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**Wednesday, April 2, 2014**  
**Room 544, Legislative Office Building**  
**10:00 a.m.**

- I. **Call to Order**
- II. **Approval of Minutes from March 5, 2014 meeting**
- III. **Wilson v. Division of Employment Security**  
*Jan Paul, Research Division*
- IV. **Emergency Unemployment Compensation**  
*Cindy Avrette, Research Division*
- V. **UI Technical Corrections**  
*Greg Roney, Research Division*
- VI. **Division of Workforce Solutions (DWS) Status Updates**  
*Will Collins, Special Assistant for Workforce Development, Department of Commerce*
  - **Local Office Service Realignment**
  - **DES/DWS - Memorandum of Understanding**
- VII. **Division of Employment Security (DES) Status Updates**  
*Assistant Secretary Folwell, DES, Department of Commerce*
  - **UI Trust Fund Debt Balance**
  - **Claims Backlog**
  - **Debit Cards: Inactive vs. Unpinned**
  - **BCR Waiver & Potential 2.7% Add-On**
- VIII. **Adjournment**

